United Nations A/HRC/34/52/Add.3

General Assembly

Distr.: General
20 February 2017

Original: English

Human Rights Council
Thirty-fourth session
27 February-24 March 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights defenders on his visit to Azerbaijan from 14 to 22 September 2016. During his visit, the Special Rapporteur sought to examine the principal question of whether the environment in which human rights defenders operate in Azerbaijan is safe and enabling. In the report he concludes that human rights defenders are increasingly at risk and do not feel safe because of increasingly restrictive legislation, criminalization of their actions and a lack of access to justice. They do not feel empowered owing to stigmatization, intimidation and excessive oversight and scrutiny. The Special Rapporteur puts forward a series of recommendations to all relevant stakeholders, with a view to adopting a corrective course of action and addressing the challenges and risks facing defenders in Azerbaijan.

* The present document was submitted late to reflect the most recent developments.

GE.17-02692(E)
1702692

Please recycle

Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan**

Contents

		Page
I.	Introduction	3
II.	International, regional and national framework	3
III.	Civil society environment	5
	A. Legal and institutional framework	6
	B. Situation of human rights defenders	7
	C. Specific groups of human rights defenders at risk	14
	D. Access to justice	15
	E. National human rights institution	17
	F. Protection policy for human rights defenders	18
	G. Community of human rights defenders	18
IV.	International and regional cooperation	19
V.	Conclusions	21
VI.	Recommendations	22

** Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the situation of human rights defenders conducted an official visit to Azerbaijan from 14 to 22 September 2016, at the invitation of the Government. The objective of the visit was to assess the situation of human rights defenders in the country in the context of the obligations and commitments of the State under international human rights law and in the light of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). An examination of the legal, institutional and administrative framework in the country for the promotion and protection of human rights was of particular importance to the present review.

2. In the course of his visit, the Special Rapporteur met high-level representatives of the Presidential Administration, State Security Service and the Ministries of Foreign Affairs, Internal Affairs, Taxes, Communication and Justice. He also met senior officials from the Supreme Court, the Office of the Prosecutor-General, the Office of the Commissioner for Human Rights and the State Support Council for Non-governmental Organizations. In addition, he met members of the United Nations country team and United Nations agencies, the Council of Europe and the diplomatic corps.

3. The Special Rapporteur also met a wide range of human rights defenders, lawyers, journalists and representatives of non-governmental organizations (NGOs). He also met human rights defenders in detention, reinforcing his overall impression of the vulnerable situation of civil society in Azerbaijan.

4. The Special Rapporteur thanks the Government of Azerbaijan for extending an invitation to him and for its excellent cooperation throughout the visit, as well as for continued assistance with additional information after the visit. He is grateful to everyone who took the time to meet with him and shared their valuable experiences and insights, as well as those who helped to organize the visit.

II. International, regional and national framework

5. Azerbaijan has gone through significant and rapid changes over the past decades. It has faced many geopolitical challenges. Situated at the crossroads between Eastern Europe and Western Asia, Azerbaijan is divided into 66 districts, 77 cities and 13 urban districts.

6. An unresolved armed conflict in and around the Nagorno-Karabakh region of Azerbaijan has resulted in more than 600,000 internally displaced persons and thousands more refugees. A ceasefire signed in 1994 remains fragile, with reports of frequent violations. In April 2016, heavy fighting broke out in what was seen as the worst episode of violence since the ceasefire. In December 2016, a clash on the international border between Azerbaijan and Armenia to the north of the territory resulted in three deaths. In the meetings the Special Rapporteur held with representatives of the Government and of civil society, interlocutors repeatedly raised the issue of internally displaced persons as one of the main human rights concerns affecting the country.

7. The political system is reported to be increasingly authoritarian, with a high degree of power concentrated in the Presidential Administration.[1] The country's first parliament,

[1] See, for example, Economist Intelligence Unit, Azerbaijan country report, January 2017, p. 3.

the unicameral National Assembly, was elected in 1995 and consists of 125 deputies elected from single-member constituencies.

8. Azerbaijan has experienced a period of sustained economic growth over the past decades, driven by increasing revenues from oil and gas. Thanks to high economic growth in the 2000s, the Government initiated large public sector investment programmes and policies to expand social assistance and increase wages. That helped to reduce poverty substantially and improved the distribution of wealth.

9. Nonetheless, Azerbaijan is reportedly experiencing serious economic and financial challenges, which have been exacerbated by low oil prices and the devaluation of the national currency, the manat. In 2015, more than two thirds of the country's foreign currency reserves were spent to support the exchange rate of the national currency.[1]

10. Corruption is widely perceived to be endemic and deeply institutionalized, "permeating all spheres of public life, with entrenched political patronage networks and widespread conflicts of interest closely connected to the political elite".[2] Azerbaijan ranked 123rd out of the 176 countries assessed on the Transparency International corruption perceptions index for 2016.[4] According to some observers, the Government could face the risk of social unrest and greater public dissatisfaction, owing to a sharp fall in incomes in 2016, large income disparities, a high level of corruption and unaccountable elites.[5]

11. In accordance with article 148 of the constitution of 1995, international human rights treaties ratified by Azerbaijan constitute an integral part of the legislative system.[6] Article 151 holds that, whenever there is disagreement between international agreements and treaties and domestic normative-legal acts (except for the constitution and acts accepted by referendum), the provisions of international agreements take precedence.

12. Azerbaijan is party to eight core international human rights treaties. It has yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. In that connection, the Special Rapporteur joins the calls by other United Nations human rights mechanisms in encouraging the State to ratify the remaining treaties.

13. Azerbaijan has ratified all eight core conventions of the International Labour Organization (ILO) that cover four categories of principles and rights: freedom of association and the right to collective bargaining; the elimination of forced labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation. It has also ratified the Convention for the Protection of Human Rights and Fundamental Freedoms.

14. As a member of the Council of Europe, its membership is contingent upon respect for a set of common principles, on which the Council is founded. Human rights, democracy and rule of law constitute the three founding pillars of the Council of Europe. Azerbaijan is also a participating State in the Organization for Security and Cooperation in Europe

[1] See www.bloomberg.com/news/articles/2016-09-02/azerbaijan-s-banks-halt-foreign-currency-sales-as-crisis-deepens.

[2] See Transparency International, "The state of corruption: Armenia, Azerbaijan, Georgia, Moldova and Ukraine", July 2015, p. 15.

[4] Available from www.transparency.org/news/feature/corruption_perceptions_index_2016.

[5] See Economist Intelligence Unit, Azerbaijan country report, January 2017, p. 3.

[6] See www.azerbaijan.az/portal/General/Constitution/doc/constitution_e.pdf.

(OSCE), which strongly advocates for the human dimension of security and for promotion of full respect for human rights.

15. In line with international human rights law, the primary duty to promote and protect human rights and fundamental freedoms lies with the State. That obligation includes guaranteeing the right of everyone, individually and in association with others, to strive for the protection and realization of human rights. In other words, every person has the right to defend all human rights for all. That is the essence of the Declaration on Human Rights Defenders, which was reinforced by subsequent resolutions of the General Assembly and the Human Rights Council.

16. The Azerbaijani State is therefore under an obligation to take concrete steps to create the necessary conditions, including in the political and legal domains, to ensure that everyone in the country can enjoy and promote all human rights and freedoms in practice. The Special Rapporteur has continuously emphasized that ensuring a safe and enabling environment for human rights defenders is a principal part of that responsibility.[7]

17. The Special Rapporteur's visit therefore focused primarily on assessing some of the key elements of the enabling environment, namely a conducive legal, institutional and administrative framework; access to justice; a strong and independent national human rights institution; effective protection policies and mechanisms, paying attention to groups at risk and applying a gender-sensitive approach; non-State actors that respect and support the work of defenders; and a strong and dynamic community of human rights defenders. In other words, the Special Rapporteur set out to establish if human rights defenders were safe and empowered in Azerbaijan. The subsequent sections will provide more detailed answers to these questions.

III. Civil society environment

18. During his visit, the Special Rapporteur was frequently asked by various interlocutors about the parameters for the definition of human rights defenders under international human rights law. It became evident that the very classification of defenders was increasingly politicized in Azerbaijan.

19. In his discussions, the Special Rapporteur referred to an established broad definition of human rights defenders, which has been enshrined in the Declaration on Human Rights Defenders. He recalled that human rights defenders are those who, individually or with others, act to promote or protect human rights, nationally and internationally, in a peaceful manner.

20. Human rights defenders are members of civil society organizations, journalists, bloggers, whistle-blowers and political activists who advocate, among other things, for the rights to free speech, free assembly and free and fair elections. They are not required to belong to any registered organization to be a human rights defender. They can be ordinary men and women who believe in the universality of human rights and act to defend them. To the United Nations, they are agents of change, safeguarding democracy and ensuring that it remains open, pluralistic and participatory. They defend the principles of the rule of law and good governance. The Special Rapporteur emphasizes that without human rights defenders and without their invaluable contribution, Azerbaijani society would be far less free, less equal and less hopeful.

[7] See, for example, the report by the previous mandate holder focusing on the elements of a safe and enabling environment for human rights defenders, A/HRC/25/55.

21. **In order to depoliticize the discourse on defenders, the Special Rapporteur urges the Government of Azerbaijan, the international community and civil society to refer persistently to the Declaration on Human Rights Defenders. That will help to raise the profile of defenders in the country and strengthen their legitimacy in the wider society.**

A. Legal and institutional framework

22. A new constitution was adopted on 12 November 1995through a referendum and amended in 2009, whereby the presidential term limits were abolished and stability secured for the incumbent President. The same year, the first restrictive amendments to the NGO and grant legislation were adopted, whose compatibility with human rights standards was questioned by the European Commission for Democracy through Law (the Venice Commission).

23. The second constitutional reforms of 29 amendments proposed by the President in July 2016 were approved by a national referendum on 26 September 2016. The Venice Commission issued a preliminary opinion on the amendments, regretting that the National Assembly was not permitted to debate the reforms and the population were not given sufficient time to discuss the draft, which undermined the legitimacy of the reforms.[8] It also criticized the proposed institutional reforms, which would further consolidate power in the hands of the President, allowing him to dissolve the National Assembly and weakening the independence of the judiciary, since the role of parliament in the approval of judges would be reduced.

24. The Special Rapporteur acknowledges that the Government has adopted numerous national strategies, which contribute to the overall strengthening of the rule of law and combating corruption. For example, Azerbaijan developed a national action plan for the period 2016 to 2018 on the promotion of open government, which was the fourth policy document to address corruption. However, the action plan is said to lack clear anti-corruption goals and is not evidence-based.[9]

25. The Azerbaijan national integrity system is characterized by a dominant executive branch and strong law enforcement agencies, which are largely unaccountable due to weak oversight.[10] However, the ability of other State institutions, such as the judiciary and the legislature, to hold the executive to account is said to be seriously limited by the fact that sanctions are not imposed for failure to act on their findings.[11] Important gaps in the legislation remain, including the lack of protection for whistle-blowers, comprehensive conflict of interest regulations and private sector anti-bribery legislation.[12]

26. Government reforms continue to be hindered by the range of other laws and policies that are in place, including those related to the rights to freedom of expression, association and assembly, which have the opposite effect. Despite Government assertions that its actions aim to foster transparency and accountability in the NGO sector, in practice they appear to be limiting the activities of domestic and foreign NGOs.[13] The United Nations

[8] Venice Commission, preliminary opinion No. 864/2016 on the draft modifications to the constitution, 20 September 2016.

[9] See OECD, *Anti-corruption Reforms in Azerbaijan*, September 2016, available from www.oecd.org/corruption/acn/Azerbaijan-Round-4-Monitoring-Report-ENG.pdf.

[10] See Transparency International, *Azerbaijan National Integrity System Assessment*, 2014, p. 10.

[11] Ibid., p. 16.

[12] Ibid., p. 15.

[13] World Bank, *Azerbaijan Systematic Country Diagnostic*, June 2015, p. 65.

human rights mechanisms and the Council of Europe, particularly its Venice Commission and the Commissioner for Human Rights, have been vocal about the deleterious effects of legislative limitations on defenders. Representatives of OSCE have also spoken out on several occasions regarding laws and measures that threatened fundamental freedoms of expression and the media, and free and fair elections.

27. The Special Rapporteur warns against the use of legislation to regulate, undermine or obstruct the work of human rights defenders. He emphasizes that article 2 (2) of the Declaration on Human Rights Defenders calls upon States to adopt legislative, administrative and other steps to ensure that the rights and freedoms enshrined in the Declaration are effectively guaranteed. **He recommends that the Government review and abolish all administrative and legislative provisions that restrict the rights of defenders or obstruct their legitimate activities. National legislation should be brought in line with the State party's obligations under international human rights law.**

B. Situation of human rights defenders

1. Stigmatization

28. The situation of civil society in Azerbaijan has seen serious setbacks since 2009, as the rights to freedom of expression, assembly and association have increasingly been curtailed when exercised in opposition to the Government or its policies.[14] Moreover, high-level government officials have used a strident rhetoric to stigmatize human rights defenders and declare them tools of Western influence bound to undermine the State.

29. In December 2014, the head of the Presidential Administration published an essay, stating that Western-funded NGOs played the role of a "fifth column" in Azerbaijan and made several public statements repeating the accusation. Other key officials made similar statements. Most defenders have been accused of being political opponents, promoting values that run counter to those of their society or culture. They have been denounced as politically or financially motivated actors. During the visit, it became evident that such inflammatory language by senior government officials has had a stigmatizing impact on civil society.

30. The continued stigmatization of defenders, which exposes them to heightened risks and produces a chilling effect on the public perception of them, remains of concern. Describing reputable organizations as paid political activists serves no legitimate purpose. The Special Rapporteur urges the Government to refrain from stigmatizing human rights defenders and to respect the legitimate role of civil society in the promotion of human rights and the rule of law in Azerbaijan.

31. The Government is encouraged to support the work of independent civil society organizations, despite disagreements or criticisms, bearing in mind their invaluable role in advancing Azerbaijani society. The Special Rapporteur urges the Government to undertake activities to raise awareness of human rights among the public and foster a spirit of dialogue and cooperation in society.

2. Criminalization

32. During the visit, the Special Rapporteur received many reports and testimonies pointing to the intensified crackdown on and criminalization of civil society in Azerbaijan. In that context, the authorities have targeted defenders, journalists, lawyers and grassroots

[14] Human Rights Watch, *Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent*, 2013.

activists through the use of politically motivated criminal prosecutions, arrests, imprisonment and travel bans. They have also used detention to intimidate political and social media activists on what often seem to be spurious misdemeanour charges of resisting police orders or petty hooliganism.

33. In 2015, the Committee against Torture expressed deep concern that human rights defenders had been arbitrarily deprived of their liberty, subjected to ill-treatment and, in some cases, denied adequate medical treatment in retaliation for their professional activities (see CAT/C/AZE/CO/4, para. 10). At the conclusion of its visit in May 2016, the Working Group on arbitrary detention stated that defenders continued to be detained under criminal or administrative charges as a way to impair the exercise of their basic human rights and fundamental freedoms and to silence them. Those practices constituted an abuse of authority and violated the rule of law that Azerbaijan had agreed to comply with.[15] The Working Group also referred to the large number of cases of detainees who were exposed to violence, torture and ill-treatment. When he visited detained defenders during his visit, the Special Rapporteur could attest to the vulnerability of their physical integrity owing to the continued reports of violence in the context of detention in the country.

34. The Special Rapporteur, jointly with other mandate holders, has issued a number of public statements, urging the authorities to put an end immediately to all forms of persecution of human rights activists in the country. At the session of the Human Rights Council, held in June 2015, a group of 25 States endorsed an oral statement on the situation of human rights in Azerbaijan, raising concerns about the shrinking space for civil society and the imprisonment of independent voices, in particular defenders, and calling for their immediate and unconditional release.[16]

35. The punitive approach to criminalize defenders is said to include a number of the following elements: applying politically motivated charges (inciting hatred, mass disorder and treason); resorting to fabricated charges (possession of drugs and weapons, hooliganism and embezzlement); and using special charges (illegal business activity, tax evasion, and abuse of office) to target primarily the heads of prominent NGOs in Azerbaijan and curtail the ability of NGOs to operate.[17]

36. It is alarming that the maximum term of imprisonment under the code of administrative offences for misdemeanours, with which defenders are often charged (for example, hooliganism, resisting police and traffic violations), has been increased from 15 to 90 days. It is now equal to the minimum term of detention under the criminal code. The Human Rights Committee has held that such severity of punishment may amount to de facto criminal sanction (see CCPR/C/AZE/CO/4, para. 20). Furthermore, in practice, administrative trials that result in such sentences are reportedly perfunctory, with defendants having limited access to independent counsel. Judges tend to decide on periods of detention based almost exclusively on police testimonies. The widespread nature of this type of criminalization could be seen in the documenting of at least 30 cases by civil society, in which the authorities used administrative law offences to jail human rights activists in 2016.[18]

---

[15] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20021&LangID=E#sthash.SqmbciYf.dpuf.

[16] Available from www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/int-priorities/humanrights/HRC29---JC-human-rights-in-Azerbaijan.pdf.

[17] Freedom Now and Human Rights House Network, "Breaking point in Azerbaijan", May 2015.

[18] See Human Rights Watch, "Harassed, imprisoned, exiled: Azerbaijan's continuing crackdown on government critics, lawyers and civil society", October 2016.

37. The gravity of the arbitrary detention of defenders in Azerbaijan is illustrated through the continuous efforts by civil society to monitor and document how many political prisoners are in detention at a given time. Various lists of political prisoners are updated regularly to inform the debate about the exact number of political prisoners in the country.[19] In fact, during their visits, both the Special Rapporteur and the Working Group on arbitrary detention received various lists of a large number of defenders, journalists and political and religious leaders who were detained on a broad range of politically motivated charges (drugs- and arms-related offences, hooliganism, resisting police, tax evasion, etc.) during their visits.

38. In late 2015 and early 2016, the Government conditionally released or pardoned a number of human rights defenders. However, none of those released had their convictions vacated and several still face travel restrictions. The Special Rapporteur shares the view of the Working Group on arbitrary detention that the pardon did not lead to any significant change in the country regarding other persons deprived of their liberty. Furthermore, even as some activists and journalists were released, the authorities regrettably arrested many others on spurious criminal and administrative charges to prevent them from carrying out their legitimate work.[20]

39. The Special Rapporteur is deeply concerned about the intimidation facing the families and relatives of defenders who carry out their activism from abroad, which in some cases has involved criminal charges being brought against those relatives. The Special Rapporteur calls on the Government to refrain from criminalizing the important work of human rights defenders and immediately review the cases of defenders and their relatives deprived of their liberty, with a view to releasing them unconditionally.

3. Freedom of expression

40. Despite a national law guaranteeing freedom of speech, Azerbaijan has continued to face challenges in enabling the realization of freedom of expression and the media. Independent media outlets have been frequently targeted. Their licences have often been withdrawn for the expression of critical views. Under the law on mass media, online media outlets can be shut down for committing defamation twice in one year.

41. In December 2014, the Government suspended the activity of *Radio Azadliq* in the context of a broader criminal persecution of civil society. *Meydan TV* was forced to terminate its broadcast in the same month. Its editor and director both had to flee abroad, many of its journalists are banned from travelling abroad and their bank accounts are still frozen. In July 2016, the offices of *ANS TV and Radio* were closed as part of an investigation related to their coverage of the situation of the attempted coup d'état in Turkey.

42. The Special Rapporteur received reports of severe pressure being put on independent newspapers, including, for example, the closure of *Khural* and *Zerkalo* newspapers. Journalists and bloggers have been arrested on fabricated charges. Seymur Hazi, a reporter on the *Azadliq* newspaper and a leading anchor for television channel *Azerbaycan Saati*, was arrested in August 2014 and imprisoned for five years on the fabricated charge of hooliganism. In August 2016, Faiq Amirov, financial director of the same newspaper, was placed in pretrial detention for storing and spreading books and electronic data related to Fethullah Gülen. His detention led to the newspaper's financial accounts being frozen. Khadija Ismayilova was regularly intimidated for her investigative journalism, until

[19] See Working Group on a Unified List of Political Prisoners in Azerbaijan, "A unified list of political prisoners in Azerbaijan", November 2016.

[20] See Human Rights Watch, "Harassed, imprisoned, exiled".

September 2015, when she was charged with embezzlement and tax evasion and sentenced to seven and half years in prison. She was released in May 2016 on probation and banned from travelling abroad for five years. During his visit, the Special Rapporteur was informed of at least 20 journalists and bloggers who had been sanctioned in some way by the authorities.

43. In addition, some NGOs working on the protection of freedom of expression have been investigated or closed down. For example, the Media Rights Institute and the Institute for Reporters' Freedom and Safety were effectively closed. Not only were the leaders of those organizations affected by the ongoing investigations and their bank accounts frozen for several years, but this also happened to their former employees. The closure of these NGOs has created a gap in the protection of freedom of expression and defence of the rights of journalists.

44. The authorities also use administrative detention to intimidate journalists and social media activists on spurious misdemeanour charges. As a result, continued harassment has encouraged self-censorship by even the most outspoken activists, minimizing both the quality and quantity of advocacy and journalism in the country.[21]

45. In addition, the authorities reportedly put pressure on private companies to discourage them from advertising with critical and independent newspapers and media outlets, which has weakened their financial sustainability and curtailed their activities.

46. In Azerbaijan, defamation remains a criminal offence, which can lead to up to three years' imprisonment. Smearing the honour of the President is punishable by up to two years in prison, or five years if joined with other accusations of criminality. In 2013, the defamation laws were amended to include Internet content. More recently, in November 2016, the National Assembly approved amendments proposed by the Prosecutor General to the criminal code. The amendments included the addition of article 148 (1) (posting slander or insult on an Internet information resource by using fake user names, profiles or accounts), punishable by imprisonment for up to one year, and the extension of article 323 (1) (smearing or humiliating the honour and dignity of the President in public statements, publicly shown products, or the mass media) to online activities through the use of fake user names, profiles or accounts, punishable by up to three years' imprisonment.[22]

47. The Special Rapporteur acknowledges the broad access to the Internet in Azerbaijan, including the growing use of social media. However, there are increased reports of intimidation and retaliation for views expressed on the Internet, including the imposition of criminal charges in relation to critical opinions. For example, Mehman Huseynov, a human rights blogger, was briefly detained and released in June 2012, but the investigation against him is still open. He is banned from travelling abroad and his identity card has been confiscated. Fuad Gahramanli, a prisoner of conscience, was arrested in December 2015 after posting on Facebook an appeal for people to protect their rights, which led to a criminal charge for making public appeals against the State and inciting national and religious hatred.

4. Freedom of information

48. Overall, legislation on access to information is well developed in Azerbaijan. However, broad exceptions to the right of access and a lack of sanctions for violations

[21] See United States Agency for International Development (USAID), *The 2015 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, p. 38.

[22] See report of the Institute for Reporters' Freedom and Safety, available from www.irfs.org/news-feed/azerbaijani-parliament-approves-bill-restricting-online-speech/.

appear to weaken the implementation of those legislative guarantees. The usual approach by authorities to requests for information is that of refusal or inadequate response. Further shortcomings in implementation have included the requirement to provide personal details in order to receive the information needed; disregarded time frames; and inconsistent interpretation of the meaning and scope of what constitutes public information throughout government agencies.[23]

49. Defenders are therefore obliged to challenge refusal of freedom of information requests through the courts, which often support the position of the authorities. Despite the requirement to appoint a special ombudsperson on freedom of information, as stipulated by the relevant legislation, the existing Commissioner for Human Rights has assumed that role. However, it emerged during discussions with civil society that even though the law provides the Commissioner with a mandate for oversight of the way in which the Government provides access to information, in practice, her office has yet to implement its functions effectively in the area of freedom of information.

50. Furthermore, the legislative amendments in June 2013 made it impossible to obtain information on the ownership of companies and broadcasters, which became a commercial secret. This has hindered not only the work of investigative journalists and anti-corruption NGOs but also the overall efforts of the Government to promote transparency and combat corruption. The argument used for the amendment, namely that previously free information was frequently abused or used to blackmail individuals is not convincing. There are other legislative and policy tools at the disposal of the authorities to protect individuals from blackmail, without severely restricting the scope of freedom of public interest information.

51. **The Special Rapporteur recommends that the Government effectively enforce proactive publication of information, publish public interest data in open format on the Internet, limit the exemptions to freedom of information requests and provide for a proportionality test to grant wider access to information.**

52. **The Special Rapporteur urges the Government to repeal and review legislation that limits or sanctions the exercise of freedom of expression and opinion, both online and offline. The Government is further urged to refrain from taking retaliatory or criminalizing measures in relation to free expression.**

5. Freedom of association

53. The Special Rapporteur was struck to observe the drastic impediments to the right to freedom of association caused by the legislative amendments to laws regulating civil society operations adopted between 2013 and 2015. The already challenging environment for NGOs has turned into a total crisis.

54. Despite Government assertions that the legislation does not prevent NGO activities without State registration, it is clear that NGOs are effectively prevented from operating without registration because they cannot open a bank account, obtain legal entity status or receive foreign funding. Furthermore, NGOs have to register every change to founding papers or factual prerequisites (change of address or phone) and obtain an extract of the registration certificate to continue their work. Any failure to comply with this onerous requirement is sanctioned through administrative liability.

55. Foreign NGOs risk liability for operating local branches without State registration. They are required to enter into an agreement of a limited duration with the Government and seek formal approval of their compliance with such vague criteria as respect for the national

[23] See OECD, *Anti-Corruption Reforms in Azerbaijan*, p. 8.

and moral values of the Azerbaijani nation. Any failure to comply with this requirement results in heavy financial penalties.

56. The new rules have granted broad discretion to the Government, which has led to an increasing number of organizations either being denied or operating without registration, facing possible criminal prosecution later as a result.

57. Access to funding has been severely curtailed as a result of the legislative amendments. Since then, both donor organizations and donor recipients are required to obtain approval from the authorities before funded activity can be implemented. In effect, there is a complicated three-step procedure for a grant to be made accessible: (a) a donor organization must obtain permission to provide grants; (b) NGOs must register grant agreements; and (c) NGOs must register each service agreement signed with any foreign organization, company or individual before it is implemented. Furthermore, the new NGO laws have increased administrative penalties for NGOs and allowed the suspension of their activities for one year for non-compliance with the regulations.

58. The heavy caseload of targeted organizations points to the large-scale persecution of domestic and international NGOs in Azerbaijan since 2014. Dozens have had their bank accounts and those of their leaders seized; employees have been repeatedly interrogated; tax inspections of NGO financial activities have been carried out, with heavy penalties as a result; there have been degrading and discriminatory physical checks of NGO staff at border crossing points; and many NGOs have been closed down.

59. Numerous employees of the NGOs affected have been banned from travelling abroad and their bank accounts frozen. Prominent NGO leaders have been arrested, convicted or exiled abroad. In October 2016, the European Court of Human Rights is said to have received complaints from 25 Azerbaijani NGOs in connection with the violation of freedom of association. The complaints are related to the refusal of the Government to register NGOs, under the pretext of deficiencies in the founding documents, repeatedly returning the documents and failing to investigate their complaints.[24] The Court has issued six decisions on violations of freedom of association in Azerbaijan. Four of them are connected to refusal to register NGOs and two to cancellation of registration.

60. **The Special Rapporteur urges the Government to cease its punitive approach to NGOs and refrain from committing widespread violations of the right to freedom of association. The Government should instead embrace a more supportive approach to civil society, even if those organizations may be critical of the Government.**

6. Freedom of peaceful assembly

61. The right to peaceful assembly is protected under international human rights law and the constitution. Through assembly, human rights defenders can mobilize the population and encourage social dialogue on critical issues.

62. The authorities have placed limitations on the right to peaceful protest by regulating it in a broad range of circumstances. Requests for public assemblies, especially by critical elements of civil society or in the regions, have reportedly been usually denied, delayed or approved in areas that are remote or unconducive to public meetings. There are frequent reports of the use of force against peaceful protests and arrests of demonstrators.

63. The widespread detention of defenders in the context of peaceful assemblies is of great concern. It effectively prevents the exercise by human rights defenders of their right to free peaceful assembly and expression. The authorities have also used administrative

[24] See www.contact.az/docs/2016/Social/103100173458en.htm?7#.WJAdQbYrLBI.

detention against those involved in organizing, participating in, or vocally showing support for public protests, for example in the context of the recent constitutional referendum. Officials have also targeted several political activists who had criticized the country's economic deterioration at the time when protests linked to economic concerns were taking place in several different cities between December 2015 and February 2016.[25]

64. Private enterprises, including hotel and conference businesses, are concerned about retaliation from the Government and refuse to allow opposition activists to hold meetings in their premises.

65. During the visit, the Special Rapporteur learned of the so-called "preventive measures", whereby organizers of and participants in public rallies are interviewed or temporarily arrested prior to the event. As the visit took place a week before the referendum in September 2016, he was alerted to the limitations placed on the attempts by numerous groups to assemble in public spaces in opposition to the proposed amendments to the constitution. In that regard, he sought clarification from the Government on a list of 45 individuals and human rights defenders, who were allegedly targeted through warnings, arrests and detention prior to the peaceful assemblies on 17 September 2016. The Government replied that only 13 out of 45 persons were arrested for committing administrative offences, such as hooliganism and resisting the police. The information provided confirms the overall pattern adopted by the authorities of using such charges to prevent defenders from peaceful assembly or in retaliation for their legitimate activities.

66. It is hard to believe that the predominant majority of Azerbaijani defenders are hooligans and aggressors. Given the experience gained during the visit, it is more likely that such charges are used as a political tool to intimidate and criminalize peaceful human rights defenders. Furthermore, the clarification received from the Government in response to the Special Rapporteur provided insufficient explanation to meaningfully elucidate the pattern of criminalization of those who were involved in recent public protests, including the wide use of charges on administrative offences leading to detention for up to 90 days.

67. **The Special Rapporteur urges the Government to ensure that restrictions to peaceful assembly do not impair the essence of the right to such assembly, are prescribed by law, are proportionate and necessary in a democratic society and still allow demonstrations to take place within sight and sound of its object and target audience.**

7. Right to participate in public affairs

68. According to the International Covenant on Civil and Political Rights (art. 25 (a)) and the Declaration on Human Rights Defenders (art. 8), everyone has a right to participate in public affairs and, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs. The Human Rights Committee has also interpreted the right to participation in public affairs, as including a specific right to participate in constitution-making.[26]

69. The Special Rapporteur therefore emphasizes that human rights defenders in Azerbaijan are fully entitled to participate in the conduct of political and social affairs of the country. They have a legitimate right to express their views, online and offline, on

[25] See Human Rights Watch, "Harassed, imprisoned, exiled", p. 2.

[26] See Human Rights Committee, general comment No. 25 (1996) on participation in public affairs and the right to vote.

proposed legal amendments, participate in constitutional reforms, engage in a dialogue with authorities, or peacefully protest against Government policies or actions.

70. It should be noted that in 2007, the Government established the Council on State Support to Non-governmental Organizations to provide State financial support to NGOs and facilitate cooperation with civil society. Registered NGOs can approach the Council to receive funds. However, the perception among independent civil society organizations is that the Council gives preference to organizations loyal to the Government.[27]

71. Furthermore, the law on public participation of 2014, which stipulates the participation of NGOs in the public councils that should be created to monitor the work of central and local state administrations, is said to present the potential to foster policy dialogue. However, NGOs have voiced concerns about the failure to implement the law and that independent organizations would not be welcomed in such councils, even when they are established.[28]

72. In 2006, on the initiative of the Council of Europe, the Government established a joint working group on human rights issues, composed of representatives of human rights organizations and authorities. Nonetheless, in October 2015, the Secretary General of the Council withdrew from the working group, pointing to the dramatic deterioration of the overall situation of human rights defenders in the country.

73. The Special Rapporteur notes with regret that the scope and quality of dialogue between civil society and government officials have been steadily deteriorating. The authorities are said to display a general lack of interest in such dialogue, especially when it entails an open and frank debate of dissenting views and when it involves independent NGOs and human rights defenders. This has led to an instinctive suspicion of dialogue among the authorities, or their overt resistance to engagement with civil society.

74. **The Special Rapporteur encourages the Government to build bridges with civil society organizations and to establish a regular and meaningful dialogue with human rights defenders, ensuring broad and inclusive participation. Such continuous dialogue and partnership is ultimately in the long-term interest of the Government of Azerbaijan.**

C. Specific groups of human rights defenders at risk

75. Besides the overall context of stigmatization and increasingly limited space for civil society in Azerbaijan, some defenders are at particular risk, especially human rights lawyers, journalists and whistle-blowers. They face multiple and aggravated forms of discrimination, as well as visible and invisible forms of violence that prevent them from carrying out their work in a safe and enabling environment.

76. In the context of continued challenges regarding gender equality in the country and the overall stigmatization of civil society, the Special Rapporteur underlines the importance of applying a gender-sensitive perspective in the protection and promotion of human rights defenders. Women human rights defenders can find themselves exposed to particular risks. The Special Rapporteur notes the concern expressed by the Human Rights Committee about patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in society and about the severe restrictions imposed on women and girls with a view to preserving the so-called family honour (see CCPR/C/AZE/CO/4, para.14). He also recalls the concerns of the Committee on the

[27] World Bank, *Azerbaijan Systematic Country Diagnostic*, p. 65.

[28] USAID, *The 2015 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, p. 38.

Elimination of Discrimination against Women about restrictions on the work of women human rights defenders, including some cases of arrest and detention (see CEDAW/C/AZE/CO/5, para. 16).

77. The Special Rapporteur heard testimonies that journalists and individuals who report corruption or other abuses of authority through official channels have faced retaliation from the perpetrators they have accused. Whistle-blowers play a vital role in exposing corruption, fraud and mismanagement, and in preventing disasters that arise from negligence or wrongdoing. However, there is little protection granted to them. Most have been subject to harassment and retaliation, including loss of employment and being blacklisted for future employment. This has sent a chilling message, which will deter others from denouncing corruption or misconduct by public officials.

78. It is important to protect whistle-blowers and journalistic sources against discrimination and retaliation, as well as ensuring a safe space for individuals to speak out about corruption and other forms of wrongdoing. Failure to ensure such protection can also have a chilling effect on journalists and civil society in their role as public watchdogs. **The Special Rapporteur calls for the adoption of a law that will include a broad definition of whistle-blowing, which would apply to both public and private employees and would grant protection from all forms of retaliation or discrimination. He further recommends the establishment of a strong and independent national agency, which would have the power to grant legal protection and support whistle-blowers.**

79. Despite the obligations of the State to guarantee that lawyers can discharge their professional functions and protect their rights, human rights lawyers increasingly face challenges through a number of means, including criminal prosecutions, searches, disciplinary action, freezing of assets and other administrative measures. The well-known cases of Intigam Aliyev, Aslan Ismayilov and Alaif Hasanov demonstrate the intimidation of independent lawyers through detention and lawsuits.

80. For those lawyers who are members of the Bar Association, disciplinary proceedings have been one of the main means of retaliation for their human rights or professional activities.[29] During the visit, the Special Rapporteur raised with the Bar Association and the judiciary the cases of several lawyers whose disbarment and sanctioning were unjustified and politically motivated. The politicization of the actions taken by the Bar Association takes place in the context of its gross institutional weaknesses, which raises serious questions about its legitimacy and puts the ability of the body to regulate the profession effectively in severe doubt. The Special Rapporteur considers that disbarments of human rights lawyers, together with criminal prosecutions, searches and freezing of their assets are part of the broader intimidation facing human rights defenders in the country.

D. Access to justice

81. The judiciary is structured as a three-tiered court system consisting of trial courts of general and special jurisdiction, appellate courts, the Supreme Court and the Constitutional Court. The Supreme Court is the highest judicial body on civil, criminal, administrative and other cases directed to general and specialized law courts. Judges of the Supreme Court are appointed by the parliament on the recommendation of the President. The Constitutional Court is appointed in the same manner and has a special jurisdiction to review the compatibility of legislation, executive decrees and court decisions with constitutional requirements.

[29] International Commission of Jurists, "Defenceless defenders: systemic problems in the legal profession of Azerbaijan", November 2016.

82. A key element of judicial independence is the institutional independence of the judiciary from the executive and legislative branches of Government.[30] According to the Government, the independence of judges in Azerbaijan is ensured by their "non-politicization, non-removability, and immunity during the term in power, by limiting their discharge from position and termination of powers, by independent functioning of the judiciary and administration of justice being conducted in accordance with the procedure envisaged by law, by not allowing any persons to limit or interfere with court proceedings, by protecting [the] personal security of judges and providing them with financial and social guarantees appropriate to their positions".[31]

83. The Government also notes a number of reforms aimed at making the courts more accessible and increasing their efficiency. Provisions on the independence of judges have been introduced into the codes of criminal procedure and civil procedure. A legal academy has been established and the judicial infrastructure has been renovated and upgraded.

84. In spite of Government assertions about the reforms that have been undertaken, the judiciary still lacks independence from the executive branch of the State, including the prosecuting and law enforcement authorities. In its latest review of Azerbaijan, the Committee against Torture remained concerned at the lack of independence of the judiciary vis-à-vis the executive branch and its susceptibility to political pressure (see CAT/C/AZE/CO/4, para. 14). Civil society organizations lament that courts lack the capacity and independence to uphold the rule of law in the country[32] and that the judicial system suffers from corruption, inefficiency and understaffing.[33]

85. The judiciary is governed by the Judicial-Legal Council, which was established in 2005 by the parliament. It is chaired by the Minister of Justice and composed of representatives of high-level prosecutorial and law enforcement bodies. The Human Rights Committee has raised concerns that the Council, with its excessive powers in matters related to the appointment, promotion and disciplining of judges, is susceptible to undue interference by the executive branch (see CCPR/C/AZE/CO/4, para. 26). Civil society research also indicates the close involvement of the Ministry of Justice in many aspects of judicial governance, in particular the Council.[34]

86. **To grant civil society representatives membership of the Council, or at least a right to observe meetings, could reinforce the independence and transparency of Council. The Special Rapporteur calls for the reform of the composition and functioning of the Judicial-Legal Council to bring it into compliance with international legal standards, including by relieving the Ministry of Justice of the presiding function and excluding prosecutors and other law enforcement bodies.**

87. During the visit, governmental and judicial interlocutors denied that the lack of independence of the judiciary had an impact on the situation of human rights defenders in Azerbaijan. That is despite voluminous testimonies that the Special Rapporteur received from individual defenders and lawyers expressing their frustration that not only could they

[30] See International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors*, 2007.

[31] Information submitted by the Government to the Special Rapporteur, 16 November 2016.

[32] Human Rights House Network, contribution to the list of issues for the fourth periodic report of Azerbaijan to the Human Rights Committee, "NGO report on civil and political rights in Azerbaijan", December 2015, p. 22.

[33] Civil Rights Defenders, country report on human rights in Azerbaijan, 5 April 2016, available from www.civilrightsdefenders.org/country-reports/human-rights-in-azerbaijan-2/.

[34] See International Bar Association Human Rights Institute, "Azerbaijan: freedom of expression on trial", April 2014.

not rely on the judiciary to check the executive power, but they were also at the receiving end of biased and hostile treatment from the courts for their critical views of the Government.

88. Reports by international observers have also documented how criminal law was misused in trials related to freedom of expression, or how fair trial safeguards were regularly disregarded in so-called political cases. In such circumstances, a criminal trial appears to be a foregone conclusion. The data from civil society show that around 99 per cent of defendants in criminal cases are convicted.[15] Furthermore, judges often concur with the motions of the prosecution or approve trial transcripts that contradict the actual course of proceedings.[16]

89. **As weaknesses in the judicial system and flaws in the legal framework deprive human rights defenders of adequate access to justice, the Special Rapporteur urges the Government to implement recommendations by treaty bodies and the Venice Commission to ensure the judiciary can operate independently and effectively.**

90. Access to legal advice is an essential part of the right to a fair trial, as enshrined in article 14 of the International Covenant on Civil and Political Rights and article 62 of the Constitution of Azerbaijan. However, it is reported that legislative guarantees have not been sufficient for ensuring access to justice in the country, especially given that there are fewer than 10 defence lawyers who are willing and qualified to undertake human rights-related cases, despite being under threat of persecution and harassment from the authorities.[17] **The Special Rapporteur encourages the Government to allocate budgetary resources to ensure access to independent legal assistance for human rights defenders in order to obtain effective access to justice.**

E. National human rights institution

91. The Commissioner for Human Rights is elected by qualified majority vote of the National Assembly from among three candidates nominated by the President. The Commissioner is competent to examine complaints by individuals and NGOs of alleged violations of human rights committed by the Government and her office reported receiving 15,320 complaints in 2015, an increase of 16.5 per cent over 2014. The Commissioner can also request the Constitutional Court to review the cases of human rights violations by legislative acts in force, normative acts of the executive or of municipalities, or court decisions.

92. The Special Rapporteur recognizes the Commissioner's role in the conduct of investigations into human rights violations and the raising of awareness of human rights through annual reports and public outreach. However, some civil society organizations have raised concerns about the Commissioner's lack of criticism of the government policies that have been detrimental to the work of human rights defenders.[18]

93. The Commissioner has also been designated as the national preventative mechanism. However, the Human Rights Committee recently raised concerns about the limited

[15] According to the Echo News Agency, in Azerbaijan, fewer than 1 per cent of defendants obtain an acquittal, see www.echo.az/article.php?article_php?aid=70879.

[16] International Bar Association Human Rights Institute, "Azerbaijan: freedom of expression on trial".

[17] See International Bar Association Human Rights Institute, report to the Human Rights Committee, Azerbaijan country report task force, 7-31 March 2016.

[18] See NGO submission to the Human Rights Committee, 18 December 2015, available from tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCO%2fAZE%2f22557&Lang=en.

effectiveness in preventing torture and ill-treatment and other violations in places of deprivation of liberty of the Commissioner, especially in the context of consistent reports of torture and ill-treatment of human rights defenders and other civil society activists (see CCPR/C/AZE/CO/4, para. 18). In order to ensure the credibility and effectiveness of its work, budget allocations to the Office of the Commissioner should be increased and the Government need to take measures to ensure adequate follow-up and implementation of the Commissioner's recommendations, lest her functions be perceived as merely restricted to receiving reports and forwarding them to the competent authorities.

94. **The Special Rapporteur also recommends that the Commissioner expand the scope of her activities to provide protection and promotion for human rights defenders and appoint a focal point on human rights defenders.** Defenders could be considered as a specific group at risk and, as such, could fall within the mandate. Protection could be offered in a number of ways, including through formal complaints mechanisms and protection programmes; constitutional review of unlawful legal provisions, advocacy and awareness-raising; offering public support when violations are committed against defenders; and capacity-building. Protection could also be offered through more specific and direct means, including acting on individual complaints, visiting defenders in detention and providing legal aid in the context of violations of the rights of defenders.

F. Protection policy for human rights defenders

95. In Azerbaijan, there are no specific policies or mechanism to protect human rights defenders from attacks, threats or harassment. During his visit, the Special Rapporteur heard concerns that human rights activism has been projected to be a "political business" and NGOs are often perceived and labelled as fifth column entities by government officials, leading to further delegitimization of critical views and voices. Senior government officials have described NGOs as paid political activists who are trying to help foreign interests, which has encouraged other authorities to target human rights organizations through various administrative and criminal sanctions.

96. **The Special Rapporteur urges the Government to distinguish between a political debate among political parties and a social dialogue with civil society pertaining to the promotion of human rights, and to refrain from conflating the two discourses, which is contributing to delegitimizing independent organizations, stifling critical views and aggravating the risks facing defenders.**

97. **In recent years, several States have developed national mechanisms to protect human rights defenders through adopting laws and policies in broad consultation with civil society. The Special Rapporteur recommends that the Government consider adopting national guidelines on the protection and promotion of human rights defenders, followed by a concrete action plan to strengthen the environment in which they operate. The Special Rapporteur remains available to the Government for any advisory assistance it may require in this connection.**

G. Community of human rights defenders

98. The Special Rapporteur met with numerous brave and courageous human rights defenders working on different issues during the course of the visit. Those who help migrants and internally displaced persons, defend the rights of women, the lesbian, gay, bisexual, transgender and intersex communities, environmentalists, lawyers, journalists, bloggers, trade unionists and social workers.

99. It appears that some grass-root movements or human rights defenders are portrayed as being closely affiliated with the political opposition. Political activism should not by default undermine the human rights credentials of organizations, especially if their activism is directed at promoting human rights in the country on a non-discriminatory basis. Political activism and human rights activism may well be distinct in their objectives, but they are not always mutually exclusive or contradictory.

100. One can be a political dissident and a human rights defender at the same time, or a former politician and a current advocate for the rule of law, or a parliamentarian and a defender of women's rights. What makes a person a human rights defender is the commonality of purpose, which is the full realization of all human rights for all. The Declaration on Human Rights Defenders is a good starting point to explore the nature of human rights activism.[39]

101. **Human rights defenders should seek to work across sectors to secure a broad basis of solidarity and support in society. The dwindling access to independent funding is a serious concern. The Special Rapporteur encourages international donors to continue exploring ways and means to ensure sustainable funds to human rights defenders and NGOs in the context of the shrinking civil society space in Azerbaijan.**

IV. International and regional cooperation

102. The Special Rapporteur has reviewed numerous reports and documents of the United Nations human rights mechanisms,[40] the universal periodic review of Azerbaijan[41] and the United Nations High Commissioner for Human Rights.[42] He has also assessed reports by OSCE,[43] and the Council of Europe, including its Parliamentary Assembly,[44] the European Court of Human Rights,[45] the Venice Commission[46] and the Commissioner for Human Rights.[47] For example, the Commissioner for Human Rights of the Council has published a number of country reports and third-party interventions on the cases of individual defenders, in which he has emphasized that judicial harassment and retaliatory measures against human rights defenders and their lawyers continue to characterize the response of the authorities to those who express critical opinions and cooperate with international organizations to expose human rights violations in the country.[48] What is striking is that all

[39] See, for example, Special Rapporteur on the situation of human rights defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July 2011.

[40] Available from www.ohchr.org/EN/Countries/ENACARegion/Pages/AZIndex.aspx.

[41] Available from www.upr-info.org/en/review/Azerbaijan.

[42] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16393&LangID=E.

[43] See www.osce.org/fom/130076.

[44] See assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5680&cat=8 and assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21953&lang=en.

[45] See www.echr.coe.int/Documents/CP_Azerbaijan_ENG.pdf.

[46] See www.venice.coe.int/webforms/documents/?country=41&year=all.

[47] See www.coe.int/en/web/commissioner/country-monitoring-azerbaijan.

[48] See, for example, wcd.coe.int/ViewDoc.jsp?Ref=CommDH(2016)42&Language=lanEnglish&Ver=original; rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2016)40; www.coe.int/en/web/commissioner/-/azerbaijan-an-area-of-darkness; rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2015)8; rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2

the mechanisms mentioned point to the same assessment of the worsening situation of human rights defenders in Azerbaijan. They provide a good number of recommendations addressed to the Government, urging it to remedy violations of the rights of individual human rights defenders, alleviate the administrative and judicial burden placed on them, facilitate access to international funding and recognize the positive role played by civil society organizations.

103. The Special Rapporteur acknowledges that human rights defenders see the European Court of Human Rights as the ultimate neutral arbitrator on their appeals, when they are generally rejected in the domestic courts, which are not perceived as sufficiently independent. It is regrettable that the rulings of the Court are not executed by Azerbaijan, especially in cases related to human rights defenders (for example, Ilgar Mammadov). That is despite numerous calls for implementation made by the Committee of Ministers of the Council of Europe and other regional and international organizations.

104. In the same vein, most, if not all, recommendations made by the international and regional mechanisms have yet to be implemented. Many observers have started questioning the political will of the Government to fulfil its international commitments and conform to binding obligations under international and regional human rights laws.

105. In April 2016, the Extractive Industries Transparency Initiative made an unprecedented decision to downgrade the standing of Azerbaijan from "compliant" to "candidate" country. On 26 October 2016, the Board of the Initiative considered the second validation report, which evaluated the country's progress on civil society engagement as "inadequate". While acknowledging the recent plans to for reforms towards more transparency, the Board pointed to the insufficient space for civil society to operate freely and cautioned about the "challenges related to civil society engagement, which limits the potential for the EITI to contribute to a greater public understanding of revenues and to encourage high standards of transparency and accountability".[49]

106. **The Board of the Extractive Industries Transparency Initiative will review progress in addressing these corrective actions in a third validation in July 2017. In that context, the Special Rapporteur encourages the Initiative to continue paying close attention to the situation of human rights defenders and civil society engagement in the broadest sense possible, given that transparency and accountability in the extractive industry in Azerbaijan depend on a safe and enabling environment for a wide range of individuals and groups of defenders, including journalists, bloggers, whistle-blowers and lawyers, who directly or indirectly contribute to the promotion of the rule of law and human rights in the country.**

107. Likewise, in May 2016, the Steering Committee of the Open Government Partnership, a multilateral initiative aimed at securing concrete government commitments to strengthen transparency and governance, voted to designate Azerbaijan as "inactive", suspending the country temporarily due to "unresolved constraints on the operating environment for non-governmental organizations". The decision was triggered after a number of civil society organizations had written to the Open Government Partnership to

---

015)7;
rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806da609rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2014)10; and
rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2013)14.

[49] Extractive Industries Transparency Initiative Board decision on the validation of Azerbaijan, available from https://eiti.org/validation/azerbaijan/2016.

the effect that "the climate for civil society in Azerbaijan has deteriorated to the point where it seriously threatens the ability of civil society organizations to engage effectively in the OGP process".[50] The Government of Azerbaijan has one year to demonstrate that the original concerns of the Open Government Partnership have been addressed.

108. During his visit, the Government informed the Special Rapporteur that earlier in September, the Council of State Support to Non-governmental Organizations under the Presidency had hosted an open government and civil society dialogue.[51] However, he also received testimonies that the dialogue had not been open to all defenders and civil society organizations, especially those who were known for their vocal criticism of the Government.

109. **The Special Rapporteur encourages the Open Government Partnership to continue reviewing the situation of human rights defenders and civil society, in law and practice, with a view to ensuring that the Government and civil society in Azerbaijan cooperate as true partners at the national level to achieve genuine transparency and accountability.**

110. In 1996, Azerbaijan and the European Union signed a Partnership and Cooperation Agreement that became effective in 1999, creating a framework for political relations and bilateral trade. Negotiations on a new agreement will reportedly be launched soon. That could be an opportunity to discuss the compliance of the legislation and procedures relating to civil society in Azerbaijan with the fundamental norms and standards of the European Union. **The Special Rapporteur recommends that civil society engagement be placed on the agenda of the negotiations, including consideration of the ways and means in which the European Union guidelines on human right defenders could inform the future Partnership and Cooperation Agreement.**

V. Conclusions

111. **Over the last several years, civil society in Azerbaijan has faced the worst situation since the country became independent. The Special Rapporteur was alarmed to observe that human rights defenders increasingly operate in a rather criminalized and heavily constrained environment. Defenders are exposed to serious challenges that in some instances appear to amount to violations of their fundamental rights and freedoms, as well as of their legitimate right to be a human rights defender, as enshrined in the Declaration on Human Rights Defenders.**

112. **Human rights defenders in Azerbaijan have been accused by public officials of being a fifth column of Western governments or of being foreign agents, accusations that are aimed at causing a misperception in the population of the truly valuable role played by civil society. Defenders are attacked, threatened, brought to court and sentenced under political or fabricated charges. They face smear campaigns in an attempt to discredit their work by relegating them to a political opposition, or indeed are branded as traitors.**

113. **Many human rights defenders and dozens of NGOs, their leaders and employees and their families have been subjected to administrative and criminal**

[50] CIVICUS World Alliance for Citizen Participation, Publish What You Pay and Article 19, letter, dated 2 March 2015, available from www.article19.org/data/files/medialibrary/37913/OGP-enquiry-request-letter---PWYP-CIVICUS-ART19.pdf.

[51] See report.az/en/domestic-politics/azerbaijan-establishes-open-government-partnership-government-civil-society-dialogue-platform/.

prosecution, including arbitrary detention, the seizure of their assets and bank accounts, travel bans and enormous fines and tax penalties. Significant challenges are connected to the existing legal framework governing the exercise of fundamental freedoms, such as the rights to freedom of expression, peaceful assembly and association. Legislation pertaining to national security can also have a restrictive impact on the environment in which defenders operate.

114. Having carefully considered the information received from the Government, civil society and other stakeholders, the Special Rapporteur considers that, overall, human rights defenders in Azerbaijan are not able to operate in a safe and enabling environment. In sum, they are increasingly at risk and do not feel safe because of increasingly restrictive legislation, the lack of access to justice and criminalizing actions by government authorities. They do not feel empowered owing to the stigmatization spearheaded by high-ranking officials and the government-affiliated media and in the light of excessively intrusive oversight and scrutiny by the authorities.

115. The Special Rapporteur urges the Government to adopt a corrective course of action and take urgent and concrete measures to address these challenges, with a view to ensuring that human rights defenders carry out their valuable activities in a safe and enabling environment. He looks forward to a continued constructive dialogue with the Government on the situation of human rights defenders in the country. As his mandate was established to provide advice to governments, he remains available to provide further advisory support to the Government of Azerbaijan in the review and implementation of his recommendations.

VI. Recommendations

116. The Special Rapporteur recommends that the Government of Azerbaijan:

(a) Ensure that human rights defenders carry out their work in a conducive legal and administrative framework and promptly implement the outstanding recommendations and decisions of international and regional human rights mechanisms and courts;

(b) Refrain from criminalizing the peaceful and legitimate activities of defenders and adopt a zero-tolerance approach, whether by public officials or non-State actors, towards the stigmatization and intimidation of defenders;

(c) Review and abolish all administrative and legislative provisions that restrict the rights of defenders, including the rights to freedom of expression, peaceful assembly and association, and ensure that domestic legislation complies with international human rights law and standards;

(d) Release all human rights defenders in detention, drop criminal charges against NGO leaders and employees, rescind travel bans and unblock their bank accounts, in line with the resolutions and recommendations of international and regional mechanisms;

(e) Make the registration of associations simpler, less onerous and expeditious, adopt a notification procedure and review the current NGO legislation to ensure simplified and more accessible funding for civil society;

(f) Refrain from restricting peaceful assemblies and ensure that any necessary restrictions do not impair the essence of the right to peaceful assembly, are prescribed by law, are proportionate and necessary in a democratic society, and still

allow demonstrations to take place within sight and sound of its object and target audience;

(g) **Ensure genuine, meaningful and regular consultation between the authorities and civil society;**

(h) **Formulate national guidelines on the promotion and protection of human rights defenders, in consultation with civil society organizations;**

(i) **Strengthen the judiciary by ensuring it can operate independently and effectively, and allocate budgetary resources to ensure independent legal assistance to defenders.**

117. **The Special Rapporteur recommends that the Office of the Commissioner for Human Rights:**

(a) **Strengthen the scope of its activities by prioritizing concerns raised by human rights defenders, establish working relations with networks of defenders and appoint a focal point for human rights defenders;**

(b) **Actively engage the Constitutional Court on constitutional complaints, including those that may be considered political or institutional, and proactively follow up on the implementation by the Government of its recommendations.**

118. **The Special Rapporteur recommends that human rights defenders:**

(a) **Become better informed about the Declaration on Human Rights Defenders and publicize it broadly in society, and make full use of the human rights mechanisms of the United Nations, the Council of Europe and OSCE in relation to human rights monitoring and protection;**

(b) **Develop and strengthen national and local networks of support with shared objectives, reinforce partnerships in self-protection and fundraising, and work intersectorally.**

119. **The Special Rapporteur recommends that the international community, the United Nations, the Council of Europe and OSCE should:**

(a) **Continue monitoring the situation of human rights defenders in Azerbaijan and intensify their efforts to empower and support them, including through political, legal and financial assistance;**

(b) **Engage with the Government to encourage meaningful and regular dialogue between the Government of Azerbaijan and civil society, in order to ensure that institution-building, development and other programmes are participatory and human rights compliant;**

(c) **Advocate for and support the Government of Azerbaijan in formulating a concrete action plan to implement the outstanding decisions and recommendations made by international and regional organizations and mechanisms, in consultation with civil society.**